

[home](#) > [trade topics](#) > [dispute settlement](#) > [the disputes](#) > [ds332](#)



DISPUTE SETTLEMENT: DISPUTE DS332

Brazil – Measures Affecting Imports of Retreaded Tyres

This summary has been prepared by the Secretariat under its own responsibility. The summary is for general information only and is not intended to affect the rights and obligations of Members.

Current status [back to top](#)

Implementation notified by respondent on 25 September 2009 

Find all documents from this case

(Searches Documents Online, most recent documents appear on top)

> [quick help](#) with downloading
> [comprehensive help](#) on Documents Online


> [all documents](#)

> **Problems viewing this page?**
Please contact webmaster@wto.org giving details of the operating system and web browser you are using.

Key facts [back to top](#)

Short title: Brazil – Retreaded Tyres
Complainant: European Communities
Respondent: Brazil
Third Parties: Argentina; Australia; China; Cuba; Guatemala; Japan; Korea, Republic of; Mexico; Paraguay; Chinese Taipei; Thailand; United States
Agreements cited: GATT 1994: Art. [I:1](#), [III:4](#), [XI:1](#), [XIII:1](#)
 (as cited in request for consultations)
Request for Consultations received: 20 June 2005
Panel Report circulated: 12 June 2007
Appellate Body Report circulated: 3 December 2007
Article 21.3(c) Arbitration Report circulated: 29 August 2008

Summary of the dispute to date [back to top](#)

The summary below was up-to-date at 24 February 2010 
 See also: [One-page summary of key findings of this dispute](#)

Consultations

Complaint by the European Communities.

On 20 June 2005, the European Communities requested consultations with Brazil on the imposition of measures that adversely affect exports of retreaded tyres from the EC to the Brazilian market. The EC would like to address the following measures:

- Brazil's imposition of an import ban on retreaded tyres;
- Brazil's adoption of a set of measures banning the importation of used tyres, which are sometimes applied against imports of retreaded

tyres, despite the fact that these are not used tyres;

- Brazil's imposition of a fine of 400 BRL per unit on the importation, as well as the marketing, transportation, storage, keeping or keeping in deposit or warehouses of imported, but not of domestic retreaded tyres; and
- Brazil's exemption of retreaded tyres imported from other Mercosur countries from the import ban and from the above-mentioned financial penalties, in response to the ruling of a Mercosur panel established at the request of Uruguay.

The EC considers that the foregoing measures are inconsistent with Brazil's obligations under Articles I:1, III:4, XI:1 and XIII:1 of the GATT 1994.

On 4 July 2005, Argentina requested to join the consultations. On 20 July 2005, Brazil accepted Argentina's request to join the consultations.

On 17 November 2005, the European Communities requested the establishment of a panel. At its meeting on 28 November 2005, the DSB deferred the establishment of a panel until a second request is made by the European Communities.

Panel and Appellate Body proceedings

At its meeting on 20 January 2006, the DSB established a panel. Argentina, Australia, Japan, Korea and the United States reserved their third party rights at the meeting. Subsequently, China, Cuba, Guatemala, Mexico, Paraguay, Chinese Taipei and Thailand reserved their third party rights. On 6 March 2006, the European Communities requested the Director-General to compose the panel. On 16 March 2006, the Director-General composed the panel.

On 18 September 2006, the Chairman of the Panel informed the DSB that it would not be possible for the Panel to complete its work in six months due to the schedule adopted by the Panel taking into consideration the views of the parties. The Panel expects to complete its work in December 2006. On 21 December 2006, the Chairman of the Panel informed the DSB that it would not be possible for the Panel to complete its work in December 2006 and estimated that it will issue its final report to the parties by April 2007.

On 12 June 2007, the report of the Panel was circulated to Members. The Panel concluded that:

- with respect to Brazil's import prohibition on retreaded tyres (i) Portaria SECEX 14/2004 is inconsistent with Article XI:1 of GATT 1994 in that it prohibits the issuance of import licences for retreaded tyres, and is not justified under Article XX(b) of GATT 1994; (ii) Portaria DECEX 8/1991, to the extent that it prohibits the importation of retreaded tyres, is inconsistent with Article XI:1 and is not justified under Article XX(b) of GATT 1994; and (iii) Resolution CONAMA 23/1996 is not inconsistent with Article XI:1.
- with respect to the fines imposed by Brazil on importation, marketing, transportation, storage, keeping or warehousing of retreaded tyres, Presidential Decree 3.179, as amended by Presidential Decree 3.919, is inconsistent with Article XI:1 of GATT 1994 in that it imposes limiting conditions in relation to the importation of retreaded tyres and is not justified under either Article XX(b) or Article XX(d) of GATT 1994.
- with respect to the measures maintained by the Brazilian State of Rio Grande do Sul in respect of retreaded tyres, Law 12.114, as amended by Law 12.381, is inconsistent with Article III:4 of GATT 1994 in that it accords less favourable treatment to imported retreaded tyres than to like domestic products and is not justified under Article XX(b) of GATT 1994.

On 3 September 2007, the European Communities notified its intention to appeal to the Appellate Body certain issues of law covered in the Panel report and certain legal interpretations developed by the Panel. On 31 October 2007, the Chairman of the Appellate Body informed the DSB that the Appellate Body would not be able to circulate its report within 60 days due to the time required for completion and translation of the report. The Appellate Body estimated that the report would be circulated to WTO Members no later than 3 December 2007.

On 3 December 2007, the Appellate Body report was circulated to Members. The Appellate Body:

- upheld the Panel's finding that the import ban can be considered

“necessary” within the meaning of Article XX(b) and is thus provisionally justified under that provision and found that the Panel did not breach its duty under Article 11 of the DSU to make an objective assessment of the facts.

- reversed the Panel's findings that the MERCOSUR exemption would result in the import ban being applied in a manner that constitutes unjustifiable discrimination and a disguised restriction on international trade only to the extent that it results in volumes of imports of retreaded tyres that would significantly undermine the achievement of the objective of the import ban;
- reversed the Panel's findings that the MERCOSUR exemption has not resulted in arbitrary discrimination and that the MERCOSUR exemption has not resulted in unjustifiable discrimination; and found instead that the MERCOSUR exemption has resulted in the import ban being applied in a manner that constitutes arbitrary or unjustifiable discrimination within the meaning of the chapeau of Article XX;
- reversed the Panel's findings that the imports of used tyres under court injunctions have resulted in the import ban being applied in a manner that constitutes unjustifiable discrimination and a disguised restriction on international trade only to the extent that such imports have taken place in volumes that significantly undermine the achievement of the objective of the import ban; and found instead that the imports of used tyres under court injunctions have resulted in the import ban being applied in a manner that constitutes arbitrary or unjustifiable discrimination within the meaning of the chapeau of Article XX; and
- with respect to Article XX of the GATT 1994, the Appellate Body upheld, albeit for different reasons, the Panel's findings that the import ban is not justified under Article XX of the GATT 1994.

On 17 December 2007, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report.

Implementation of adopted reports

At its DSB meeting of 15 January 2008, Brazil said that it intended to implement the recommendations and rulings of the DSB in a manner consistent with its WTO obligations. In that regard, Brazil was ready to consult with the European Communities on the appropriate duration of the reasonable period of time for implementation. On 4 June 2008, the European Communities requested binding arbitration under Article 21.3(c). On 26 June 2008, pursuant to the request received on 16 June 2008 from the European Communities, the Director-General appointed Mr Yasuhei Taniguchi to act as arbitrator. Mr Taniguchi accepted this appointment by letter dated 20 June 2008 to the European Communities and Brazil. On 29 August 2008, the arbitration award was circulated to Members. The arbitrator determined that the reasonable period of time for Brazil to implement the recommendations and rulings of the DSB is 12 months from the adoption of the Panel and Appellate Body reports. The reasonable period of time expired on 17 December 2008.

On 7 January 2009, the European Communities and Brazil notified the DSB of a procedural agreement regarding Article 22 of the DSU that was concluded on 5 January 2009.

At the DSB meeting on 25 September 2009, Brazil reported, with satisfaction, its full compliance with the recommendations and rulings of the DSB.

The World Trade Organization (WTO) deals with the global rules of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible.

© World Trade Organization 2015
Disclaimer

Key areas of the website
Who we are
What we do
How we are structured
Our global membership
Annual report
Legal texts

Follow WTO
Email updates
RSS newsfeeds
Facebook
YouTube
Twitter
flickr